of water by upper riparian owners who had obtained title from the government after 1877. *Held,* that as defendants' title was not obtained under the Desert Land Act, that act did not apply, and defendants could use the water as riparian owners. *San Joaquin & Kings River Canal & Irrigation Co., Inc.,* v. *Worswick et al.* (Cal., 1922), 203 Pac. 999.

The opposed views of the two cases reflect the condition of the previous decisions on this point. In *Hough* v. *Porter,* 51 Ore. 318, which is cited in both cases and followed by the South Dakota court, the supreme court of Oregon held that all lands settled upon after March 3, 1877, "were accepted with the implied understanding that the first to appropriate and use the water for the purposes specified in the act should have the superior right thereto." On the other hand, the supreme court of Washington, in *Stiil* v. *Palouse Irrigation & Power Co.,* 64 Wash. 606, held that the provisions of the statute applied only to desert lands as defined therein, and did not apply to lands (or to streams thereon) title to which was obtained from the government under other statutes. Both decisions have been followed and affirmed by later cases in the same jurisdictions. There is no actual authority in the United States courts. *Winters* v. *U. S.,* 143 Fed. 740, though sometimes cited as opposed to *Hough* v. *Porter, supra,* is decided on another ground. In *Boguvillas Land & Cattle Co.* v. *Curtis,* 213 U. S. 339, the court finds it unnecessary to decide the question raised in the two principal cases, but refers to the decision in *Hough* v. *Porter, supra,* as being based on "plausible grounds." As to the text writers, Mr. Kinney (Sec. 817) criticises *Hough* v. *Porter,* while Mr. Wiel (Secs. 128-130) merely refers to the doctrine of that case as "a new phase of the law," and Mr. Long (Sec. 306) rather hazily inclines to Mr. Kinney's views. It seems clear that the question is still an open one.

WORKMEN'S COMPENSATION ACTS—INJURIES RECEIVED WHILE ACTING IN AN EMERGENCY AS "ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT."—The plaintiff's intestate, employed as a gardener by the defendant company, was severely injured while attempting to stop a team of horses which had run away from the defendant's receiving platform near which he had been working. The team belonged to a drayman who had been delivering goods to the defendant company at the receiving platform, which was located within the latter's grounds. *Held,* an injury "arising out of and in the course of employment." *Sebo* v. *Libby, McNeil & Libby* (Mich., 1921), 185 N. W. 702.

The plaintiff, a chambermaid, after retiring to her room in the hotel for the night, lighted an alcohol lamp with which to heat a curling iron. After she had finished curling her hair she left the room momentarily, and on returning discovered that the lamp had started a fire. In extinguishing the fire she was severely burned. The chambermaids had been expressly forbidden to use lamps like the one in question. *Held,* an injury "arising out of and in the course of employment." *Kraft* v. *West Hotel Co.* (Ia., 1921), 185 N. W. 895.

As to what circumstances may constitute an "emergency," see 25 HARV. L. REV. 416-418. The cases quite uniformly hold that a workman is still within the scope of his employment when, confronted with an emergency, he performs acts to protect his employer's property, even though such acts are entirely different from those included in his regularly appointed duties. *Rees* v. *Thomas* [1899], 1 Q. B. 1015 (mine worker injured while stopping employer's runaway horse); *Baum* v. *Industrial Com.*, 288 Ill. 516 (factory employee injured in defending employer's factory against strikers); *Southern Surety Co.* v. *Stubbs* (Tex. Civ. App.), 199 S. W. 343 (engineer injured while trying to save his employer's vessel from shipwreck). For a collection of cases, see note, 6 A. L. R. 1247. Recovery has been allowed where the employee was mistaken in his belief that danger to his employer's property was imminent. *Harrison* v. *Whitaker Bros.*, 16 T. L. R. 108 (employee injured while attempting to adjust a switch which he believed was not properly set for an approaching train, but which, in fact, was in good order, being worked automatically). The same general rule applies where an employee performs acts to save himself or other employees from injury for which the employer would be liable. *Rist* v. *Larkin & Sangster*, 156 N. Y. Supp. 875; *United States Fidelity & G. Co.* v. *Industrial Acc. Commission*, 174 Cal. 616; *London & E. Shipping Co.* v. *Brown* [1905], Scot. Sess. Cas. 488. Most of the courts limit the rule to cases like the above, where the employee acts in furtherance of the employer's "material interests." Recovery has been denied when an employee was injured while protecting his employer from physical injury. *Clark* v. *Clark*, 189 Mich. 652; *Collins* v. *Collins* [1907], 2 I. R. 104. And where an employee was injured while rescuing a fellow employee from the danger of an injury for which the employer would not have been liable. *Mullen* v. *Stewart & Co.* [1908], Scot. Sess. Cas. 991. But see *In re Waters* v. *Taylor Co.*, 218 N. Y. 248, where recovery was allowed to the employee of one contractor who was injured while rescuing the employee of another contractor, both being engaged in work on the same building. The court based its decision on the economic and humanitarian principles underlying the Workmen's Compensation Act and the fact that the act was "within the reasonable anticipation" of the employer. See also *Priglise* v. *Fonda, J. & G. R. Co.*, 183 N. Y. Supp. 414, commented upon in 20 COLUM. L. REV. 919. There is no settled rule regarding cases where the employee's wrongful conduct is the cause of the emergency. In *Hapelman* v. *Poole*, 25 T. L. R. 155, an employee had been left in charge of some caged lions and in trying to drive back into its cage one that had escaped the employee was killed. The court in allowing recovery declared that whether or not the escape of the lion was due to the employee's misconduct was unimportant, since wilful misconduct did not excuse the employer from liability where the injury resulted in death or serious and permanent disablement. Workmen's Compensation Act, 1906, 6 Edw. VII, c. 58, sec. 1 (2) (c). In *Powell* v. *Lanarkshire Steel Co.* [1904], Scot. Sess. Cas. 1039, an employee for his own pleasure, and contrary to orders, climbed into a car standing on a track at the top of a steep incline. He thus set the car

in motion, and while attempting to prevent its descent down the incline he suffered injuries from which he later died. The court denied relief on the ground that the wilful misconduct of the employee was the ultimate cause of the accident. The statute in that case denied recovery for all injuries due to the serious and wilful misconduct of the employee. Workmen's Compensation Act, 1897, 60-61 Vict., c. 37, sec. 1. The decision in the first of the principal cases, *supra,* is in accord with the general rule; that in the second seems sound in view of the fact that the Iowa statute denies relief for injuries due to misconduct only when the injury is due to the employee's intoxication or his wilful intention to injure himself or another. Compiled Code of Iowa, 1919, Sec. 808. Moreover, allowing relief even in cases where the misconduct of the employee has imperiled the employer's property will carry out the public policy underlying the Workmen's Compensation Acts and serve as an incentive to the employee to protect his employer's property.